LIBRARY
SUPREME COURT, U.S.

No. 281

Office - Supreme Court, U. S.
FILED
DEC 9 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

SIMON E. SOBELOFF,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
OSCAR H. DAVIS,
Assistant to the Solicitor General,
BEATRICE ROSENBERG,
RICHARD J. MARCHARD,
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	6
Summary of argument	9
Argument	15
I. The context of the term "representative" in the Labor Management Relations Act shows that as used in Section 302 it includes an officer of a labor union	17
II. The legislative history of Section 302 supports the view that the term "representative" is not limited to collective bargaining agents	30
Conclusion	45

CITATIONS

Cases:	
Adams Express Co. v. *Kentucky*, 238 U. S. 190	17
Addison v. *Holly Hill Co.*, 322 U. S. 607	18
Federal Trade Comm. v. *Bunte Bros.*, 312 U. S. 349	17
Jones v. *Liberty Glass Co.*, 332 U. S. 524	18
National Labor Relations Board v. *Highland Park Co.*, 341 U. S. 322	18
United States v. *Brennan, et al.*, 134 F. Supp. 42	17, 29
United States v. *Connelly*, 129 F. Supp. 786	17
Statutes:	
Labor Management Relations Act of 1947 (Taft-Hartley Act), 61 Stat. 136, 29 U. S. C. 141 *et seq*	26
Sec. 1	15
Sec. 204 (a)	26

368615—55——1

Statutes—Continued

	Page
Sec. 211 (a)	26
Sec. 211 (b)	26
Sec. 302	9, 10, 12, 15, 16, 22, 27, 28, 30
Sec. 302 (a)	2, 9, 11, 12, 19, 22, 23
Sec. 302 (b)	2, 9, 11, 12, 17, 19, 22, 23
Sec. 302 (c)	3, 10, 11, 20, 22, 23, 24
Sec. 302 (d)	5
Sec. 303	25
Sec. 404	27
Sec. 501 (3)	5, 17, 27
National Labor Relations Act, 49 Stat. 449, as amended by Section 101 of the Labor Management Relations Act, 29 U. S. C. 151 *et seq*	24
Sec. 1	24
Sec. 2 (4)	6, 18, 27, 35, 44
Sec. 7	24, 36
Sec. 8	25, 36, 37, 38, 41
Sec. 9	24, 25
Miscellaneous:	
92 Cong. Rec.:	
4809	31
4891	31, 32
4892–4895	32
4896	33
5040–5041	33, 34
5466	35
5739	35
5946	35
5957	30
6071	30
6674–6678	35
93 Cong. Rec.:	
3318	36
3613	38
3671	37–38
4678	39
4746	43
Hearings before the Committee on Labor and Publ. Welfare on S. 55 and S. J. Res. 22, etc., United States Senate, 80th Cong., 1st Sess.	18, 40

Miscellaneous—Continued

	Page
H. R. 3020 (80th Cong., 1st Sess.)	13, 35, 36, 39, 41
H. R. 4908 (79th Cong., 2d Sess.)	13, 30, 39
H. Rep. No. 245 (80th Cong., 1st Sess.)	41
H. Rep. No. 510 (80th Cong., 1st Sess.)	14, 43, 44
S. 55 (80 Cong., 1st Sess.)	40
S. 1126 (80th Cong., 1st Sess.)	38, 39
S. Rep. No. 105 (80th Cong., 1st Sess.)	13–14, 38, 39, 41
Twentieth Century Fund, *How Collective Bargaining Works* (1945), pp. 26, 27	18
Webster's New International Dictionary (2d ed.)	18

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Appeals (R. 30–43) are reported at 225 F. 2d 417. The opinion of the District Court (R. 19–28) is reported at 128 F. Supp. 128.

JURISDICTION

The judgment of the Court of Appeals was entered on July 1, 1955 (R. 44). The petition for a writ of certiorari was filed July 29, 1955, and was granted October 17, 1955 (R. 44). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether respondent, the president of the International Longshoremen's Association, which has been designated by the longshore laborers of the Port of New York as their bargaining agent, is a "representative" of employees within the meaning of Section 302 (b) of the Labor Management Relations Act of 1947, which makes it unlawful for "any representative of any employees" to receive money from the employer of such employees.

STATUTES INVOLVED

The Labor Management Relations Act of 1947 (the so-called Taft-Hartley Act), 61 Stat. 136, provides in part:

> RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES
>
> SEC. 302 [29 U. S. C. 186]. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such em-

ployees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by

MICRO
TRADE
CARD
MARK ®

4931

MATTHEW BENDER & COMPANY
MB

55

the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both * * *

* * * * *

DEFINITIONS

* * * * * *

SEC. 501 (3) [29 U. S. C. 142 (3)]. The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

The National Labor Relations Act, 49 Stat. 449, as amended by Section 101 of the Labor Management Relations Act, provides in part:

DEFINITIONS

* * * * * *

SEC. 2 (4) [29 U. S. C. 152 (4)]. The term "representatives" includes any individual or labor organization.

STATEMENT

On December 4, 1953, an indictment in three counts charging violations of Section 302 (b) of the Labor Management Relations Act was returned against respondent in the United States District Court for the Southern District of New York. Each count charged that respondent, being a representative of employees who were engaged in an industry affecting commerce, namely, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive money from employers of such employees (R. 2–3). After a trial without a jury, respondent was found guilty on each count and was sentenced to imprisonment for a period of six months on each count, the sentences to run concurrently, and was fined the sum of $2,500 (R. 29).

During the trial it was established by stipulation that the respondent, at the times alleged in the indictment, was the duly elected president of

the International Longshoremen's Association (ILA), an international labor organization representing longshoremen and related classes of labor on the waterfront in the Port of New York and in other ports in the United States, Canada and certain territorial possessions of the United States (R. 3–4); that he was also the president of the Atlantic Coast District of the ILA (R. 3); that the ILA, the Atlantic Coast District of the ILA, and local unions affiliated with the ILA, were the recognized bargaining agents for the longshore employees in the Port of New York for 1950 and 1951 (R. 3–5); that respondent, as president and principal executive officer of the ILA, was a member of the Wage Scale Committee of the ILA, a committee comprised of over 100 persons who were either officers of the Atlantic Coast District of the ILA or selected by the various local unions affiliated with the ILA in the Atlantic Coast District, which negotiated collective bargaining agreements with the New York Shipping Association (NYSA), an organization of employers who employed longshoremen, in 1950 and 1951 (R. 5); that respondent, as principal executive officer of the ILA, and others were authorized to sign and did sign the collective bargaining agreement entered into in 1950 and 1951 between the ILA and the NYSA (R. 5); that J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., were, at the time alleged in the

indictment, engaged in interstate commerce, were members of the NYSA, and were bound by the collective bargaining agreements entered into by the ILA and the NYSA (R. 4, 5–6).

On the basis of the evidence adduced during the trial, the District Court found (R. 20) that in December of each year from 1946 to 1951, James C. Kennedy, president of both J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., made an annual cash payment of $1,000 to respondent in respondent's office in New York City. The payment in December 1950 was made in an envelope on which was written "Merry Christmas to Joseph P. Ryan from J. Arthur Kennedy & Son, Inc." The envelope containing the December 1951 payment bore the message "Merry Christmas to Joseph P. Ryan from Daniels & Kennedy, Inc." A payment of $500 was made in April 1951, in a plain envelope.

The trial court also found that respondent had knowingly received and accepted the money payments alleged in the indictment, that he knew the money came from the Kennedy corporations, and that he knew that the corporations were employers of employees that he represented (R. 25).

The Court of Appeals reversed respondent's conviction with directions to the trial court to dismiss the indictment on the ground that the term "representative" as used in Section 302 (b) of the Labor Management Relations Act refers

only to the collective bargaining agent, and that respondent, as an officer of the collective bargaining agent, was not a representative of employees within the purview of that section (R. 33–39). Judge Learned Hand, dissenting, could see "no reason for denying * * * the natural meaning of 'representative,' which would cover any official, or at any rate the president, of a union" (R. 40).

SUMMARY OF ARGUMENT

The declared purpose of the Labor Management Relations Act is to protect interstate commerce by recognizing and securing the legitimate rights of employers, employees, and labor organizations in their relations with each other. This goal will best be reached by reading the term "representative" in Section 302, as its context and the legislative history require, to cover an individual officer of a labor union as well as the union itself. In that way, the statute will protect employees from the corrupting influence of personal gifts and payments by employers to union representatives. If, however, Section 302 were held to apply only to payments to the union itself, the reach of the provision would be so restricted that one would wonder why Congress thought to include it in the form in which it appears.

I

Section 302 (a) and (b) forbids an employer from giving, and "*any* representative" of his em-

ployees from receiving, "*any*" payment. The definition sections of the Act declare that the term "representative" "includes *any* individual or labor organization" (emphasis added). In every-day as well as labor parlance, an individual who speaks for employees in their dealings with their employer is a "representative". On initial reading, therefore, the statute would seem squarely to cover a union president like respondent.

The structure and terms of Section 302 fully support this interpretation. Only when union officials are included within "representative" can the exceptions to the prohibitions of the section be given their full significance. Exempt from the prohibitions are (Section 302 (c)): (1) money paid by an employer to "any representative who is an employee" as compensation for his service as an employee; (2) payments made in satisfaction of a judgment or an award; (3) payments for goods purchased in the regular course of business; (4) check-off payments under certain conditions of union membership dues; and (5) payments to a trust fund established in compliance with statutory conditions when employers and employees are "equally represented in the administration of such fund."

If "representative" is read as synonymous with "collective bargaining agency"—as the court below would have it—some meaning can be found in

the exceptions concerning the satisfaction of judgments and awards and the check-off of union dues, but this technical definition cannot be read into the other exceptions without seriously impairing their function. If "representative" means only the collective bargaining agent, then the exception of wages, which are paid only to individual employees, applies only in the rare situation where the collective bargaining for a group of employees is done by an individual and not to the usual case where the union and its officers are the bargaining agents. This exception can have full significance only if representative is given its ordinary meaning and understood to include union officials. The same is true, though in lesser degree, of the exception for purchase of goods and even for the judgments and awards exception. These three exceptions prove that Congress contemplated that a significant number of *individuals* would be affected by the prohibition.

The welfare fund exception in Section 302 (c) (5) also establishes that a special or technical definition of "representative" is inapposite. As the court below recognized, this provision was to prevent exclusive domination of employee trust funds by unions or union officials. The clause is drafted as an exception to the general prohibitions of Section 302 (a) and (b), and is therefore totally inoperative if the employer contributions

are not made to a "representative." But if "representative" as used in Section 302 (a) and (b) is limited to collective bargaining agencies, then it would be easily possible to frustrate the important welfare fund provision by having the payments made to trustees or individuals who are not collective bargaining agents. Only by taking "representative" in its ordinary sense can both the prohibitions of subsections (a) and (b) and the welfare fund exception be read together to give the meaning to the statute which Congress obviously intended.

The ordinary meaning of "representative" not only gives that term significance in each provision of Section 302 but is completely compatible with its use in every other section of the Labor Management Relations Act. When Congress intended, as it frequently did, to refer to the collective bargaining agent of the employees, it always coupled the word "representative" with appropriate modifying words, phrases, or clauses. When it intended to refer to representatives in the ordinary sense—as in Section 302—it omitted these qualifications. Standing alone, apart from special modifiers indicating that the collective bargaining agent is meant, "representative" carries its ordinary meaning throughout the Act.

II

The historical evolution of Section 302 fortifies this interpretation of "representative". Section

302, as it now appears, had its origin in a floor amendment by Senator Byrd to the Case bill (H. R. 4908), which was introduced in the 79th Congress as a comprehensive measure to encourage the settlement of labor-management disputes and minimize industrial strife. The Byrd proposal would have made it unlawful for any employee representative to accept or receive gifts or payments from an employer. During the debate, Senator Byrd made it clear that his amendment applied to union leaders as well as to the union itself. Even when a modifying definition of "representative" was introduced as a limiting factor, it clearly encompassed union officers and was so understood. Though the Case bill passed both Houses of Congress with the modified Byrd amendment, it was vetoed by the President and did not become law.

H. R. 3020, Congressman Hartley's bill in the 80th Congress, as reported from the House Committee on Education and Labor and passed by the House, sought to attain the same end as the earlier Byrd amendment by providing that it would be an unfair labor practice for an employer to give anything of value to any person in a position of trust in a labor organization. The Senate Committee on Labor and Public Welfare then reported out a substitute bill which did not outlaw employer contributions or payments, as had H. R. 3020. A minority of the Senate Committee dis-

36815—55——3

agreed, and in their "Supplemental Views" filed with the Committee Report stated that they would introduce an amendment from the floor to prohibit financial transactions between employers and representatives of employees.

Pursuant to this plan, Senator Ball, one of the Committee minority, proposed from the floor an amendment patterned after the 79th Congress' Byrd amendment. Like that amendment, Senator Ball's proposal, after prohibiting representatives of employees from receiving money from employers, contained certain exceptions including one for employer payments to union welfare funds established under certain conditions. There was also a special definition of "representatives", narrower than the general definition finally employed, but which nevertheless clearly embraced union officers. The Ball amendment was adopted by the Senate and ultimately became Section 302.

The Conference Committee deleted the special definition of "representatives" from the Ball amendment (Section 302), stating that the change was a minor clarification. The bill as they reported it already had a general definition of "representatives", based upon the ordinary meaning of that word (*supra,* p. 5). Accordingly, the omission of the special definition, if it means anything at all, enlarged rather than narrowed the coverage of the Section.

The sum of this history is that whenever employer payments were dealt with during the consideration of comprehensive labor legislation in the 79th and 80th Congresses the reach of the prohibition was intended to cover payments to individual labor leaders as well as to the union itself. Section 302, which eventuated from these debates, should therefore be construed so as to carry out that purpose.

ARGUMENT

Section 1 of the Labor Management Relations (Taft-Hartley) Act declares that it is the purpose and policy of Congress, in order to promote the full flow of commerce,

> * * * to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for *preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations* whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, * * *. [Emphasis added.]

On its face, Section 302 (*supra*, pp. 2–5), which broadly prohibits any employer from making "any" payments to "any representative of any

of his employees" and prohibits "any representative of any employees" from accepting such payments, seems designed to effectuate those expressed purposes by protecting the purity of the collective bargaining process from the gross or subtle influences that can arise when the employer bestows favors on a representative of his employees. The opinion below, by holding that the term "representative" as used in Section 302 refers only to the collective bargaining agency—the union itself—and not to the officer or agent through which a union must act, deprives the collective bargaining process of protection against such influences. Since labor organizations can act only through their officers or agents, and the vast bulk of labor-management relationships in this country involves labor unions, the effect of the decision below is to confine Section 302 to a very limited scope, and for practical purposes to negate the Congressional purpose to eradicate improper employer influences from the collective bargaining process. In a field largely preempted by federal legislation, the ruling leaves the federal government with no power to punish a labor leader who accepts payments from those with whom he presumably is dealing at arms' length on behalf of the employees, or to punish an employer who attempts to influence union affairs by the payment of gratuities to union officials. Such a result is compelled neither by the language

nor the legislative history of Section 302. On the contrary, both the language and the legislative history support the view that "representative" has its ordinary meaning of one who speaks or acts for some one else, and as used in Section 302 includes the officers of the employees' labor union.[1]

I

THE CONTEXT OF THE TERM "REPRESENTATIVE" IN THE LABOR MANAGEMENT RELATIONS ACT SHOWS THAT AS USED IN SECTION 302 IT INCLUDES AN OFFICER OF A LABOR UNION

In this, as in all cases which turn primarily on the meaning of a single word, resort must first be had to the precise terms of the statute. Cf. *Adams Express Co.* v. *Kentucky*, 238 U. S. 190, 199; *Federal Trade Comm.* v. *Bunte Bros.*, 312 U. S. 349, 350. The pivotal word in this case is "representative" as it is used in Section 302 (b) of Title III of the Labor Management Relations Act (the LMRA), *supra*, p. 2, which makes it unlawful for "any representative of any employees" to accept money or other thing of value from their employer. Section 501 (3) of Title V of the same Act, *supra*, p. 5, provides

[1] The dissenting opinion of Judge Learned Hand in the court below (R. 39–43), expressing the view that "representative" should be read in its ordinary meaning, was followed in *United States* v. *Brennan, et al.*, 134 F. Supp. 42 (D. Minn.). Cf. *United States* v. *Connelly*, 129 F. Supp. 786 (D. Minn.).

that the term "representative" shall have the same meaning as when used in the National Labor Relations Act (the NLRA), as amended by Title I of the LMRA. Section 2 (4) of the NLRA provides, in turn, that representative "includes *any* individual or labor organization" [emphasis added]. *Supra,* p. 6. Taking this statutory definition together with Webster's,[2] the phrase "*any* representative of *any* employees" would seem clearly to cover an individual who speaks for the employees as a labor union officer. This is the normal, ordinary, natural, spontaneous meaning—in the field of labor-management relationships as well as elsewhere[3]—and it should be followed unless the rest of the statute, its purpose, or its history directs otherwise. *Addison* v. *Holly Hill Co.,* 322 U. S. 607, 617–618; *Jones* v. *Liberty Glass Co.,* 332 U. S. 524, 531; *National Labor Relations Board* v. *Highland Park Co.,* 341 U. S. 322, 324–5.

---

[2] Webster's New International Dictionary (2d ed.) defines the noun "representative" as "one who represents others or another in a special capacity; an agent, deputy, or substitute * * *."

[3] In labor-management parlance, the term "union representative" or "employee representative" is commonly used to designate the *individual* who acts on behalf of the employees in their dealings with the employer. See, *e. g.*, Twentieth Century Fund, *How Collective Bargaining Works* (1945), pp. 26, 27; *Hearings before the Committee on Labor and Public Welfare on S. 55 and S. J. 22,* etc., United States Senate, 80th Cong., 1st Sess., pp. 1091–1092 (remarks of President Murray of the C. I. O.).

The rest of Section 302 does not point away from this construction. In particular, the conclusion that the prohibitions of Section 302 (a) and (b) apply to individual union officers as well as to the unions themselves—*i. e.*, that the president of the union is a "representative" of the employees, in addition to the union—is fortified by the format of the section and the exceptions set forth in subsection (c) (*supra*, pp. 3–5). Exempt from the basic prohibitions are: (1) Money paid by an employer to "any representative who is an employee" as compensation for his services as an employee; (2) payments made in satisfaction of a judgment or an award; (3) payments for goods purchased in the regular course of business; (4) "check off" payments under certain conditions in payment of membership dues in a labor organization[*] and (5) payments to a trust fund "established by such representative" if certain conditions are met, including the provision that the employees and employers be "equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon."

It is clear from these exceptions that Congress, in enacting Section 302, did not confine the general prohibitions in subdivisions (*a*) and

[*] Note the use in this subdivision of the term "labor organization" rather than the term "representative."

(b) against "*any*" payment to "*any* representative" to payments made to labor unions as legal entities. Indisputably, the exceptions relate to payments both to individuals and organizations, thus indicating that the prohibitions, from which the exceptions are carved, must also cover both individuals and entities. Some of the exceptions, such as the payment of wages, can relate only to payments to individuals; others, *e. g.*, the payment of dues, concern only payments to the union. The exceptions of payments made in settlement of a judgment or award (Section 302 (c) (2)) and of payments of the purchase price for goods obtained in the regular course of business (Section 302 (c) (3)) can, of course, formally apply to both the union and the union officers. Payments by the employer to union welfare funds are frequently not payments to either the union or the union officers but are payments to trustees, some of whom may be union officers designated by the union to be representatives of the employees.

Since these exceptions plainly encompass payments to individuals, such as union officers, the term "representative" in the prohibitory clauses of Section 302 must also be read to include individuals as well as unions. A more limited or artful meaning of "representative" would deny substance to one or more of the exceptions, and needlessly defy the general rule of construction

requiring a statute to be read, if possible, so that all its parts shall have meaning and function.

The majority opinion of the court below recognized the difficulty involved in applying its technical definition of "representative"—the collective bargaining agency of the employees—to each of these five exceptions. It acknowledged that the wage payment exception can apply only to individuals, but in an effort to give meaning to the clause it noted that an individual, under the National Labor Relations Act, can be a collective bargaining agent and therefore a "representative". This explanation of the wage payment exception seems very strained. It is hardly likely that Congress, when faced with the many broad and fundamental issues which this innovation in the law presented, was concerned to spell out an explicit exception for the rare situation where a group of employees selected an individual instead of a union to act as their bargaining agent. The same is true of the sale and judgment exceptions if the individuals they were to cover were only those within the minute class of individual collective bargaining agencies. Conversely, the judgment and sale exceptions would have an equally insignificant role if they covered only the unions themselves, and not individual union officers. On the whole, therefore, it is reasonable to conclude from the exceptions that Congress contemplated that many individuals would be covered by the

general prohibitions of Sections 302 (a) and (b), and that there was need for specific, detailed exceptions relating to payments to such individuals. It follows that Congress must have used the term "representative" with its every-day meaning, as covering both labor unions and the individual officers who act for the union.

The court below recognized, and the legislative history discussed below makes clear (*infra*, pp. 30–45), that one important purpose of Section 302, including the exceptions carved out by Section 302 (c) (5), was to regulate welfare funds so that they would not be under the exclusive domination of a union or its leader. Yet, as we have already suggested, the interpretation given the term "representative" by the majority below might well tend to defeat this known object of the legislation. The regulation of welfare funds is in the form of an *exception* to the general prohibitions of subdivisions (a) and (b), forbidding employers from making payments to "any representative" of employees and prohibiting "any representative of any employees" from accepting such payments. If a payment by the employer does not fall within the terms of (a) or (b), standing by themselves, the exceptions created by subdivision (c) never come into play. And if "representative", as used in (a) or (b), means only the collective bargaining agency, then an easy means of evasion would exist by making payments to persons who are separate

from the collective bargaining agency. Thus, welfare fund payments can be, and sometimes are, made to a fund established by a parent union, rather than by the particular local which is the collective bargaining agent for the employees of a particular employer. Even more commonly, welfare fund payments are made directly to trustees of a fund. Since the trustees of a welfare fund are not the employees' collective bargaining representative, a payment to them would not be, under the decision below, a payment to a "representative" under Section 302 (a) and (b), and therefore it would become unnecessary to comply with the conditions created by the exception under (c). A conceded, primary purpose of the legislation would be completely frustrated, and with great ease.

On the other hand, the exception with respect to welfare funds takes on full meaning if "representative", as used in subsections (a) and (b), is given its ordinary reading of anyone who acts for a group of employees. Then, a payment to anyone acting for the employees, whether he is the collective bargaining representative or not, is within subsections (a) and (b) and, in order to take advantage of the welfare fund exception, the conditions of subsection (c) must be met. This example is but another proof that, throughout Section 302, "representative" is used broadly to encompass any person, individual or entity,

who or which acts on behalf of the employees.[5]

Furthermore, an analysis of the text of the Labor Management Relations Act, as a whole, demonstrates that Congress intended the term "representative" to have its ordinary meaning when it was used alone. For when Congress meant it to refer to the employees' collective bargaining agent—*i. e.*, the union—it used apt phraseology for that purpose. Throughout the National Labor Relations Act, as amended (Title I of the LMRA), there are phrases qualifying "representative" when the collective bargaining agent is intended, *e. g.*, "designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment",[6] "to bargain collectively through representatives of their own choosing,"[7] "representatives of the employees as provided in Section

---

[5] The conditions set forth in subsection (c) for welfare funds also show that "representative" is not used in the limited, technical sense of a collective bargaining agency. Subsection 5 (B) (*supra*, pp. 4–5) speaks of both employers and employees being "equally represented" in the administration of the fund, "together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon". In this instance, there can be no dispute that "representatives" does *not* mean the union, but rather the individuals who speak for the employer or the employees on the board administering the welfare fund.

[6] Section 1 of NLRA, 29 U. S. C. 151.

[7] Section 7, 29 U. S. C. 157.

9(a),"[8] "bargain with a labor organization as the representative of his employees,"[9] or "bargaining representative for employees."[10] The simple fact is that, in the NLRA, Congress did not use the unqualified word "representative" as a synonym for collective bargaining agent.

Similarly, Section 303 of Title III of the Labor Management Relations Act, dealing with boycotts and other unlawful combinations, uses "representative" with modifying terms, *i. e.*, "labor organization as the representative," "representative of such employees under the provisions of section 9 of the National Labor Relations Act," and "bargaining representative."

While it is true that the word "representative" as used in all these instances imports the collective bargaining agent of the employees, that meaning stems, not from the word itself, but from the context in which it is used and the modifying words which surround it. If, as the Court of Appeals has held here, "representative", in and of itself, is a word of art signifying only the designated collective bargaining agent of the employees,

---

[8] Sections 8(a)(3) and 8(b)(3), 29 U. S. C. 158(a)(3) and (b) (3). Section 9 (a) of the NLRA, 29 U. S. C. 159(a), declares who shall be the exclusive collective bargaining agent of the employees.

[9] Section 8 (b) (4) (B) and (C), 29 U. S. C. 158 (b) (4) (B) and (c).

[10] Section 8(b)(4)(D) and see Section 9(a), 29 U. S. C. 158(a)(4)(D) and 159(a).

the modifying phrases would be unnecessary. But the fact is that Congress did not define or treat the word in itself as having a special significance for labor-management relations. Rather, the opposite is true. It is only by giving the word "representative" its customary usage that meaning can be read into the additional phrases used in conjunction with it when Congress did desire to refer to the collective bargaining agency (as it frequently did in Titles I and III of the LMRA).

Titles II [11] and IV [12] of the LMRA prove the point still further, if only by contrast. There, the term "representative" clearly has none of the technical connotation with which the opinion below would endow it. In Title II, dealing with conciliation of labor disputes, the word appears in Sections 204 (a) and 211 (a) and (b). Section 204 (a) uses the phrase "* * * employers and employees and their representatives * * *" in exhorting both labor and management to prevent and settle disputes. In connection with the furnishing by the Government of information useful in settling labor disputes, Section 211 (a) refers to "* * * interested representatives of employers, employees, and the general public * * *" and Section 211 (b) "* * * upon request

[11] Entitled "Conciliation of Labor Disputes in Industries Affecting Commerce; National Emergencies".

[12] "Creation of Joint Committee to Study and Report on Basic Problems Affecting Friendly Labor Relations and Productivity".

of the Service, or employers, employees, or their representatives * * *." In these contexts, the word "representative" is naturally given its customary meaning; it certainly is not restricted to the collective bargaining agent. The same is true of the use in Section 404 of Title IV of the phrase "representatives of business, industry, finance, and labor", in connection with the Joint Committee on Labor-Management Relations.

To say that "representative" is a term of art meaning only the collective bargaining agent designated by the employees, unless the context inexorably directs otherwise, is thus to ignore Congress' use of the word in a broader sense throughout the LMRA. It is also to disregard Section 501 (3) of the LMRA (*supra,* p. 5) and Section 2 (4) of the NLRA (*supra,* p. 6), which purport to define the word and give it its ordinary meaning when it is used in the Act. *Supra,* pp. 17–18. As we have shown, when the collective bargaining agent is alone intended, words of limitation are used together with the term "representative." Without those qualifications, the normal reading must be used. Only by giving "representative" the meaning it has in daily life can it be understood consistently in the many and varied sections in which it is used in the LMRA.

We have made this detailed textual analysis of the meaning of "representative" in Section 302, and throughout the Labor Management Rel ions

Act, because we believe that the use and context of the term in that statute plainly reveal the error in the holding below. This is so even if one assumes that the specific goals Congress was attempting to achieve through Section 302 cannot be gleaned from the bare text alone, and that a reader must proceed without the key of legislative purpose.

But it should be noted, even before we consider the detailed legislative history of the provision, that respondent's construction of Section 302 necessarily presupposes that Congress had a restricted goal—control only of financial transactions between unions and employers—and was not attempting more generally to keep the channels of collective bargaining free from improper pecuniary influences.[18]

In our view, the structure and terms of Section 302 are, on their face, more in accord with the broader aim of preventing "employers from tampering with the loyalty of union officials and

[18] If Congress were interested solely in union welfare funds, it would hardly have framed its statute by first enacting a broad and general prohibition against giving and receiving of "any" payments, and then proceeded to cover its alleged point of interest—the welfare fund—as one of five exceptions to these broad prohibitions. The structure of the section belies the contention that the only legislative goal was to reach and regulate these funds. If that were the purpose, a more direct and less involved provision would have been adopted.

disloyal union officials from levying tribute upon employers" (L. Hand J., R. 41). There would be little reason for Congress, in the effort to preserve the integrity of the labor-management relationship, to concern itself solely with payments to unions themselves. It is individuals not organizations who normally try to gain by bribery, favoritism, or extortion, and these transgressions are ordinarily committed for personal profit.[14] "Can it be logically said that Congess had the very limited purpose of prohibiting these wrongs only by unions [in the rare cases where they would be committed for the benefit of the unions], and did not have the purpose of making it criminal for the responsible officers of those unions to commit such offenses? If so, it would have the effect of encouraging individual wrongs while punishing such acts only if the whole membership of the union profited thereby collectively—a discrimination without either sense or justification." *United States* v. *Brennan,* 134 F. Supp. 42, 49 (D. Minn.).

[14] Respondent points out that "It has frequently been held that where a statute forbids a corporation or other legal entity to do an act, a corporate officer who causes the organization to violate the statute is himself guilty" (Br. in Opp., p. 5). But this hornbook rule is operative only when the legal entity is the principal actor. Where the labor union official is acting on his own, or for personal gain, the principle invoked by respondent would, of course, have no application.

II

THE LEGISLATIVE HISTORY OF SECTION 302 SUPPORTS THE VIEW THAT THE TERM "REPRESENTATIVE" IS NOT LIMITED TO COLLECTIVE BARGAINING AGENTS

The evolution of Section 302 from its original conception in the Case bill (H. R. 4908, 79th Cong.) to its enactment in the Taft-Hartley Act reinforces the conclusion that "representatives" carries its ordinary meaning and embraces labor union officers. That history affirmatively shows that, while regulation of union welfare funds was a significant motive for the legislation, that purpose was only part of a more general desire to protect the integrity of the collective bargaining process by prohibiting financial payments by employers to unions or union representatives, except under specified conditions.

Section 302 had its origin in an amendment to the Case bill which Senator Byrd proposed from the floor in the 79th Congress. It was the purpose of the Case bill, as recited in its preamble, "to encourage settlement of disputes between labor and management by collective bargaining and by conciliation, mediation and voluntary arbitration, thereby minimizing industrial strife, strikes and lock-outs."[15] When the Case bill came before

[15] H. R. 4908, 79th Cong., as passed by Congress on May 29, 1946 (92 Cong. Rec. 5957, 6071).

the Senate, Senator Byrd moved to insert the following amendment (92 Cong. Rec. 4809):

> SEC. 8. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are engaged in commeree or in the production of goods for commerce.
>
> (b) It shall be unlawful for any representative of any employees who are engaged in commerce or in the production of goods for commerce to demand, receive, or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.
>
> (c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer, or (2) with respect to any amounts deducted from the compensation of any employee and paid to a labor organization by an employer in payment of dues or other similar fees payable by such employee to such labor organization.
>
> (d) Any person who willfully violates any of the provisions of this section shall upon conviction thereof be subject to a fine of not more than $10,000 or to imprisonment for not more than 6 months, or both.

(e) [Provision for injunction].

(f) [Definition of "goods" and "produced"].

Senator Byrd explained briefly that the purpose of his amendment was to prohibit the payment of royalties to a labor union such as were in dispute between the coal miners and mine operators in 1946. 92 Cong. Rec. 4891.[16] During the debate on the amendment, the Senator frequently stressed that its prohibition against employer payments covered payments to union officers as well as to unions and covered corrupt payments as well as legitimate ones. 92 Cong. Rec. 4892–4895. He said:

> I am endeavoring to strike at the attempt of *representatives of labor* to obtain payments from employers in excess of the salaries paid their employees, and use such payments in establishing funds over which no one but the *labor representatives* would have any control. * * *
>
> * * * * *
>
> My amendment would prevent an employer from paying a royalty to *the representative of a union.* He would be clearly liable, under the provisions of this amendment, if he paid a royalty or other money *to the representative of a labor union,* the

[16] He also said at this time (92 Cong. Rec. 4891): "The term 'representative' includes an individual who is a labor representative as well as a labor organization * * *".

purpose of which was to bribe that representative. * * *

* * * * *

Mr. President, I shall not labor this matter any longer at this time. It probably will be discussed further.

I merely desire again to emphasize that all the amendment does is to prohibit *the representatives of a labor union* from receiving from an employer a specific sum of money. * * *

* * * * *

I will say that the only prohibition here is from making a payment to a representative of the employees, and that means *a representative of the union.* * * * [Emphasis added.]

Despite Senator Byrd's protest that his amendment would not prevent an employer from making contributions to ordinary employee functions, such as a baseball team, some Senators continued to object that the term "representative" was so broad that it would prohibit these innocuous employer contributions. 92 Cong. Rec. 4896. To allay their fears, Senator Byrd modified his amendment by adding a definition of "representative" which provided (92 Cong. Rec. 5040–1):

(f) * * * (3) "Representative" means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees,

concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and any other organization or fund of which a majority of the officers are representatives or are members of a labor organization or appointed by a representative.

Senator Byrd explained this modification as follows (92 Cong. Rec. 5040–1):

> The fourth and last modification inserts a definition of "representative" in order to meet some of the objections that were raised in debate with respect to an employer who gives money or other things of value to an employee baseball team or a picnic or outing of his employees. The term "representative" is defined to mean any labor organization or any individual who is authorized to deal with an employer on behalf of his employees concerning labor disputes, etc., and includes any other organization or fund of which a majority of the officers are representatives or are members of a labor organization or are elected or appointed by a representative. This last provision is inserted to close a possible loophole whereby a corporation or other legal entity could be set up and have royalty or other funds paid to it instead of to the union. That might be a possibility under the language as now used in the amendment. The perfecting modification which I now offer will make unlawful the payment of money to any such organiza-

> tion or fund unless employers have at least equal representation with its employees in the administration of such organization or fund, except where the employees contribute more than half to its support.

The effect of this definition was to restrict and narrow the meaning of "representative" in the amendment from the broad meaning it was ascribed in Section 2 (6) of the Case bill which defined it in the same words as it is now defined in Section 2 (4) of the Labor Relations Act as amended (*supra,* p. 6). But even this restrictive definition covered labor leaders like respondent. See Senator Byrd, quoted *supra,* p. 34, and Senator Taft, 92 Cong. Rec. 5466 ("a negotiator").

The Case bill, with the Byrd amendment containing the definition of "representative", was passed by the Senate (92 Cong. Rec. 5739) and referred to the House which accepted the Senate amendments. 92 Cong. Rec. 5946. The President vetoed the bill (92 Cong. Rec. 6674–6678) and it failed to pass over his veto (92 Cong. Rec. 6678).

The 80th Congress, like its predecessor, also undertook to revise the Wagner Act. Congressman Hartley introduced H. R. 3020, which was referred to the House Committee on Education

and Labor. 93 Cong. Rec. 3318. The broad purpose of this bill, as stated in its title, was:

> A Bill to prescribe fair and equitable rules of conduct to be observed by labor and management in *their relations with one another* which affect commerce, to protect the *rights of individual workers in their relations with labor organizations* whose activities affect commerce, to recognize the paramount public interest in labor disputes affecting commerce that endanger the public health, safety, or welfare, and for other purposes. [Emphasis added.]

This bill, like the Case bill, attempted to cure some of the evils in industrial relations thought not to be rectified by the original National Labor Relations Act. It recognized separate and distinct interests for the individual worker, the union, the employer, and the public, and it also tried to preserve and protect each such interest from intrusion and corruption by the others. It established rights for individual workers (Section 7 (a)) and sought to protect them from improper domination by unions. Sections 7 (a) and (b). It protected the union from what it conceived to be interference by the employer (Section 8 (a)) and employers from certain union activities (Section 8 (b)).

To achieve this separation of diverse interests and to protect the integrity of each, H. R. 3020 sought to proscribe corrupting financial trans-

actions between them. While it did not contain an exact prototype of present Section 302, Section 8 provided in part, that:

> 8 (a). It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (2) to dominate or interfere with the formation or administration of any labor organization * * * (B) by giving, or offering to give, any reward, favor, or thing of value *to any person in a position of trust* in such organization for the purpose of perverting his judgment or corrupting his conduct in respect to such organization * * *. [Emphasis added.]

The bill also made it an unfair labor practice for the employer to set up a check-off system unless authorized in writing by the employees or to make payments of any kind to a welfare fund in which the union exercised control. It is important to note that while the form is different, here, as in the Byrd amendment to the Case bill (*supra*, pp. 30–35), the sponsors of legislation designed to regulate union welfare funds coupled legislation for that purpose with a clear and explicit attempt to bar payments by employers to union representatives in their individual capacity in order to induce a breach of trust.

The Senate Committee on Labor and Public Welfare, to which H. R. 3020 had been referred after it had passed in the House (93 Cong. Rec.

3671), reported out an original bill, S. 1126, to accomplish the same object as H. R. 3020 (93 Cong. Rec. 3613). Though Section 8 of this bill also prohibited employers from interfering with unions by means of financial contributions, it did not refer either to check-offs or to welfare fund contributions. It simply restated Section 8 (2) of the Wagner Act when it provided:

> 8 (a). It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. * * *

The Senate Committee, in its report on S. 1126, stated that it did not see fit to alter this provision (S. Rep. No. 105 (80th Cong., 1st Sess.), p. 12).

A minority of the Committee, including Senators Taft, Ball, Donnell, Jenner and Smith, filed their "Supplemental Views" on this bill in which they expressed their view that the failure of the Committee to cover employer payments to union trust funds left a definite evil in labor-management relations inadequately covered. S. Rep. No. 105, pp. 50–56. They declared their intention to introduce four curative amendments from the floor of the Senate. The third amendment they proposed was to insert in the bill "a provision regarding so-called welfare funds similar to the section in the Case bill approved by the

Senate at the last session." S. Rep. No. 105, p. 52. They stated that (*ibid.*):

> * * * we believe it is imperative that where such funds are in existence or are agreed upon by collective bargaining, they should not be subject to racketeering or arbitrary dispensation by *union officers.* Without such restraints, employees would have no more rights in the funds supposedly established for their benefit than their union leaders choose to allow them. They may well become a mere tool to increase the power of the *union leaders* over their men, and even be open to racketeering practices. [Emphasis added.]

When S. 1126 came up for debate, Senator Ball introduced the promised amendment. It was couched in language similar to that in the Byrd amendment (Section 8 of the Case bill as it had passed the Senate, *supra*, pp. 31–32), including as subsection (g) a definition of "representative." It did, however, adopt from H. R. 3020 (Representative Hartley's original bill) the idea that checkoff payments should be permitted only if authorized in writing, and it wrote in a regulation that welfare funds should be trust funds controlled by representatives of both the employer and employees. Senator Ball, on introducing this amendment which ultimately became present Section 302, stated (93 Cong. Rec. 4678):

> Mr. President, the sole purpose of the amendment is not to prohibit welfare funds,

> but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them, and that they shall not degenerate into bribes. * * * I myself think that unless we make sure that such funds, when they are established, are really trust funds and are actually used for the benefit to employees specified in the agreement, there is very grave danger that the funds will be used for the *personal gain of union leaders,* or for political purposes, or other purposes not contemplated when they are established, and that they will in fact become rackets. [Emphasis added.]

Not only does this statement of Senator Ball reveal a purpose to reach union leaders by the prohibition, but it also serves to highlight the fact that this amendment was designed to subserve the basic policies of the entire bill by protecting the interests of the individual worker, the union and the employer from interference and corruption by the other interests.[17]

---

[17] A provision similar to the Ball amendment had been included in an earlier bill (S. 55), sponsored by Senators Ball, Taft, and Smith. At the Committee hearings on this and other labor bills, Senator Taft expressed the view that it covered payments to union representatives of the type involved here. See the colloquy between Senators Taft and Pepper in *Hearings before the Committee on Labor and Public Welfare, United States Senate, 80th Cong., 1st Sess., on S. 55 and S. J. Res. 22*, etc., at pp. 52–53. President Green of the American Federation of Labor was apparently of the same view. See *Hearings, ibid.*, at pp. 918, 1041.

Though most of the debate on the Ball amendment focused on the welfare fund exception, it would be error to conclude that welfare fund control was its sole purpose.[18] The court below relied heavily on the fact that much of the dis-

[18] As we have suggested in Point I (*supra*, pp. 19–22, 28), to say that the sole purpose of the Ball amendment was to regulate union welfare funds leaves unexplained the format of this section which begins with two blanket prohibitions. As has been explained (*supra*, pp. 35–37), the prohibitions of subsections (a) and (b) of Section 302 had their origin in Section 8 of H. R. 3020. The House Committee on Education and Labor in H. Rep. No. 245 (80th Cong. 1st Sess.) to accompany H. R. 3020, stated, at pages 29–30, that the prohibition on employer's contributions to unions was to deny to the National Labor Relations Board such employer assistance as a basis for showing favoritism to affiliated unions over independent unions as had often been charged. Though the Senate Committee on Labor and Public Welfare in S. Rep. No. 105 (80th Cong., 1st Sess.) to accompany S. 1126, did not alter the NLRA prohibitions against employer assistance to unions, it recognized, at page 12, the validity of the reasoning of the House Committee when it wrote: "* * * It has been the contention of leaders of the independents for many years that the Board had one rule for independent unions and another one for organizations affiliated with the A. F. of L. or CIO. There is no doubt that since the passage of the National Labor Relations Act, independent unions have dwindled greatly in number. To the extent that this change has come about through the provisions of Section 8 (2), which forbids employers to dominate or contribute financial or other support to labor organizations, the committee has not seen fit to make any changes in the present act." Only by so understanding subsections (a) and (b) of Section 32 as attempting to preserve the integrity and equality of all unions from outside interference and corruption can all the exceptions be reconciled with each other. See *supra*, pp. 19–24.

cussion centered on the need to regulate welfare funds to support its conclusion that "representative" as used therein was a word of art meaning only the collective bargaining agent of the employees. The dissenting opinion of Judge Hand avoided this error by putting the welfare fund discussion in its proper perspective. He said (R. 42):

> * * * The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill",—the predecessor of the Act before us—as of the Act itself. The absence of much discusion about preventing the kind of offence here prosecuted, seems to me not at all suprising; there could have been no opposition to it, except that in fact made, it might cover innocent payments.

Because no reference was made in the "Supplemental Views" of Senator Taft and his colleagues (*supra*, pp. 38–39), or during the debates, to the exceptions in favor of payments for wages, payments for goods bought in the usual course of business, payments in settlements of claims and awards, and check-offs of union dues cannot mean that they are less important than the welfare fund exception or must be disregarded. All the exceptions stand in *pari materia* under the prohibitions and must be read together. See *supra*, pp. 19–24.

Since the Ball amendment to S. 1126 was patterned after and served the same purpose as the

Byrd amendment to the Case bill in the 79th Congress, the reasoning that prompted the adoption of the Byrd amendment (*supra*, pp. 31–35) is germane to the Ball amendment;[19] and it should be recalled that the Byrd amendment undoubtedly covered payments to individual union officers. As noted *supra*, pp. 33–35, a special definition of "representative" was inserted in the Byrd amendment to give the term narrower scope than it possessed in the rest of the Case bill. But since the narrow meaning of "representative" in the Ball amendment—borrowed from the Byrd amendment—clearly encompassed union officers and other nonbargaining agents of employees (*supra*, pp. 33–35, 39–42), it follows that the same term, when broadly used elsewhere in the Labor Management Relations Act, must also include them.

The fact that the conference report retained the Ball amendment but deleted subsection (g) which specially defined "representative" (H. Rep. No. 510 (80th Cong., 1st Sess.)) thus has none of the significance given it by the majority below (R. 37, 39). The omission of a restrictive definition

[19] During the debate on the Ball amendment, Senator Taft, one of its leading sponsors (*supra*, p. 38), stated that the proposal would apply "in a case of extortion or a case where the union representative is shaking down the employer * * *" (93 Cong. Rec. 4746).

Senators Ives and Pepper engaged in a colloquy, during the debate, which clearly indicates that they believed the amendment to cover payments to individual labor leaders. See R. 22, 37, 42.

of "representative" simply meant that the term would have the same broad meaning as it has under the general definition of "representative" in Section 2 (4) of the National Labor Relations Act, as amended (*supra*, p. 6). As shown in Point I, that broad definition clearly includes an individual labor leader. *Supra*, pp. 17–27. Therefore, the omission of the special definition, if it means anything at all, must have enlarged rather than narrowed the scope of Section 302. In actual fact, the Conference Committee remarked that it adopted the provisions of the Senate amendment (which inserted Section 302) "with minor clarifying changes" (H. Rep. No. 510, p. 67), thus indicating that it did not view the change in the definition of "representative" as substantial.[20]

As this survey shows, from the Byrd amendment in the 79th Congress to the final version of Section 302 in the 80th Congress there runs the consistent aim to reach improper payments by employers to union leaders and other employee

---

[20] Respondent argues (Supp. Br. in Opp., pp. 4–5; see also R. 39) that the alteration which it says resulted from the definition change was not substantial, "viewing the section as a whole", and was therefore unmentioned by the Conference Committee. But a change which, on respondent's view, narrowed the coverage of Section 302 from all unions and union officers to unions alone could not be regarded as minor or insubstantial, on any theory. For if respondent is right, that single "minor clarifying" change drastically reduced the coverage of the section.

representatives. This was certainly one goal of the Byrd amendment in all its forms; the Hartley bill in the 80th Congress, as passed by the House, sought to attain the same end by declaring the the giving of such gratuities to be an unfair labor practice; when the Senate Committee deleted this provision, the Ball amendment reinstated its substance in the form of a criminal provision like the earlier Byrd amendment; and in this version it was passed by the Congress. It would wholly frustrate this consistent aim for the Court to limit "representative", as it is used in Section 302, to labor organizations. But if the term is given its normal meaning, the legislative purpose of preserving the collective bargaining process from the corrupting influence of employer payments to labor leaders will be properly fulfilled.

CONCLUSION

It is therefore respectfully submitted that the decision of the court below should be reversed.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
OSCAR H. DAVIS,
Assistant to the Solicitor General.
BEATRICE ROSENBERG,
RICHARD J. BLANCHARD,
Attorneys.

DECEMBER 1955.

U. S. GOVERNMENT PRINTING OFFICE, 1955